

No. 12,354

IN THE

United States Court of Appeals  
For the Ninth Circuit

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UNITED STATES OF AMERICA,  
*Appellant,*

VS.

SAMUEL HARRISON, now known as  
James Thomas Payne,  
*Appellee.*

REPLY BRIEF FOR APPELLANT.

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PAUL P. O'BRIEN,



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In his argument, appellee seems to stress the fact that a person guilty of bigamy may still be of good moral character within the spirit and intent of Section 307 of the Nationality Act of 1940 (8 USC 707).

Our District Court has heretofore discussed the subject of what constitutes good moral character under this section of the Nationality Act of 1940. This discussion was in the case of "*In Re Paoli*", decided March 11, 1943, 49 Fed. Supp. 129, at page 130. In this case, the Court states:

"Good moral character is an intangible, not a technical thing. It results from the acts and conduct of the individual. *It has been defined as 'such a character as measures up to the standard*

*of the average citizen of the community in which applicant resides.*’ In *re Hopp*, D. C., 179 Fed. 561. In *re Spenser*, Fed. Cas. No. 13,234, 22 Fed. Cas. at p. 921, the court discussed the necessary elements of good moral character under the naturalization statutes, as follows: ‘What is a “good moral character” within the meaning of the statute may not be easy of determination in all cases. The standard may vary from one generation to another, and probably the average man of the country is as high as it can be set. \* \* \* Upon general principles it would seem that whatever is forbidden by the law of the land ought to be considered, for the time being, immoral, within the purview of this statute. And it may be said with good reason that a person who violates the law thereby manifests, in a greater or less degree, that he is not well disposed to the good order and happiness of the country.’ ”

The Penal Code of the State of California, Section 281 defines bigamy as follows:

“Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.”

The exceptions in Section 282 of the Penal Code of the State of California are inapplicable. Section 283 of the California Penal Code provides:

“Bigamy is punishable by a fine not exceeding five thousand dollars and by imprisonment in the state prison not exceeding ten years.”

The District Court for the Eastern District of Wisconsin, May 28, 1910, *In re Hopp*, 179 Fed. Rep. 561,

had occasion to define what constitutes good moral character under the provisions of the Naturalization Law, Act June 29, 1906, c. 3592, 34 Stat. 596 (U. S. Comp. St. Supp. 1909, p. 475), and at page 563, stated:

“A good moral character is one that measures up as good among the people of the community in which the party lives; that is, up to the standard of the average citizen.”

It is therefore respectfully urged that a person committing bigamy does not meet the standard of morals of the average citizen in the State of California.

Dated, San Francisco, California,  
February 8, 1950.

Respectfully submitted,

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